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December 17, 1996

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

Re: CS Docket No. 96-60
Ex Parte Presentation

Dear Mr. Caton:

On behalf of ValueVision International, Inc. ("ValueVision"), this is to update the record of this proceeding to bring to the Commission's attention recent developments that flatly rebut a number of cable operator contentions regarding the viability and economics of commercial leased access.

Throughout this proceeding, TCI and other MSOs have consistently argued that the economics of leased access are unworkable. In their view, popular cable channels simply cannot afford to pay cable operators for carriage; instead, such channels depend upon the fees that cable operators pay them.[1] These commenters have sought to draw a dichotomy between highly popular cable channels that operators need to carry without charge because of the contribution these channels make to subscriber satisfaction, and potential leased access programmers that somehow must be less popular but can afford to pay leased access rates.

At bottom, this argument simply amounts to a quarrel with the clear policy judgment made by Congress in the 1992 Cable Act, in which it determined to reform the leased access provisions of the 1984 Act to ensure that leased access becomes a "genuine outlet" for unaffiliated programmers. But recent actions reportedly taken by TCI now reveal this dichotomy to be completely false in any event.

1/ See, e.g., Comments of TCI at 9; Comments of Time Warner at 13.

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According to these reports, the Cartoon Network, Animal Planet, The Learning Channel, and Home & Garden Television have now agreed to pay TCI perhaps as much as $5 to $8 per subscriber for long-term carriage on its systems.[2/] In order to make room for these new programmers, TCI is bumping other highly popular programmers such as WGN --- programmers that have not been paying TCI such carriage fees. As ValueVision has previously reported, this is not the first time that TCI has recently replaced established programmers with new ones paying additional fees. In October 1996, TCI opted to drop Lifetime and other established programmers in favor of a new Fox news channel -- despite prior surveys indicating that TCI subscribers did not prefer a second news channel.[3/] Group W recently reported a similar experience. A cable operator demanded that Group W pay for carriage, even though its network had finished second in a survey of what programming should be added to the system. Group W concluded that "you could have good-quality programming, you could finish first in the survey, and still not get on."[4/]

These recent developments underscore a number of important facts relating to the Commission's leased access proposals:

1. First, this debate is essentially about control, not economics. It is now clear beyond question that TCI, for example, is not averse to auctioning off portions of its channel capacity to the "highest bidders." Multichannel News, Dec. 9, 1996, at 240. But unlike Congress, TCI prefers that the operator rather than the Commission establish the qualifications of bidders in the auction. The difference between what Congress intended as a genuine outlet for unaffiliated programmers, and what cable operators would do with these channels, is also very clear. In TCI's case, it first selected Fox News -- in which it now holds an equity interest. And then it selected at least three more channels in which it also holds equity interests (Cartoon Network, Animal Planet, and The Learning Channel).

2. Second, the undocumented notion that adding leased access programmers would cause significant subscriber loss once again is belied by cable operators' own conduct. As with the Lifetime-Fox switchout, the issue now appears to be, not whether incumbent programming is popular with subscribers, but whether the incumbent is willing to pay for carriage. Indeed, the prime time ratings for WGN (now being dropped) in 2Q 1996 were higher than those of The Learning Channel and Home & Garden combined. Thus, cable operators' concerns about subscriber satisfaction and retention, expressed in their comments, appear to be another case of crocodile tears -- particularly in light of the reported contemplation of substantial increases in subscriber rates that will accompany these drops of established channels. The plain fact is that absent effective competition subscribers have no other choice. Such competition

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[2/] "Networks Learn Their TCI Fates," Multichannel News, Dec. 9, 1996, at 5, 14; "Nets Wait for Next Shoe to Drop," Multichannel News, Nov. 25, 1996, at 1.

[3/] See Ex Parte Presentation of ValueVision, October 2, 1996.

[4/] "Pay for Play? New Nets Ponder Their Problems," Multichannel News, Dec. 2, 1996, at 116.

clearly does not yet exist. The cable industry added more subscribers this year than DBS providers did, and TCI reports that it lost only 12,000 subscribers to DBS in 1996. Cableworld, Dec. 2, 1996, at 126.

3. Finally, the fees now reportedly being paid by cable programmers being added to TCI systems may serve as useful corroboration of ValueVision's proposed proxy for leased access rates. As ValueVision has repeatedly noted, cable operators have consistently accepted payments of 7 to 12 cents per subscriber per month from two cable channels (QVC and HSN) -- demonstrating that leased access rates in this range can hardly be viewed as unprofitable to them. TCI has reportedly claimed that the $5 to $8 per subscriber estimates described above are overstated.[5/] Even using these figures, however, proves the point. A $5 payment per subscriber for five years of carriage, for example, would be the equivalent of $1 per year, or 8 cents per month (even absent any return payments from TCI in the later years). To the extent that the Commission has any remaining questions about the economics of the proposals in the Notice, it can and should seek additional information about the nature and direction of these payments and the length of the carriage commitments associated with them.

Respectfully submitted,

William R. Richardson, Jr.

5/ Multichannel News, Dec. 9, 1996, at 14.